STRAITS SETTLEMENTS REPORTS.

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[ORIGINAL CIVIL JURISDICTION]

HUGGARD, C.J.

May 9, 1935.

IN THE MATTER OF THREE ADVOCATES AND SOLICITORS.

AND

IN THE MATTER OF A MOTION ON BEHALF OF THE ATTORNEY GENERAL OF THE STRAITS SETTLEMENTS UNDER S.26 OF ORDINANCE No. 32 OF 1934.

[SINGAPORE ORIGINATING MOTION No. 10 of 1935]

Advocates and Solicitors Ordinance 1934, Section 26 (1)—right of audience of Solicitor-General of the Straits Settlements.

The right given to the Attorney-General by Section 26 (1) of the Advocates and Solicitors Ordinance 1934 to initiate disciplinary proceedings against any Advocate and Solicitor is given to him both directly on behalf of the Crown and also as representing the public. When he acts as representing the public he does so by virtue of the principle that the Crown as *parens patriae* protects the interests of the public. It follows that his rights and duties under Section 26 are conferred upon him as first Law Officer of the Crown and his application is indirectly on behalf of the Crown. The Solicitor General is accordingly empowered by Section 36 (2) of the Ordinance to appear on his behalf and has a right of audience whether or not he is an Advocate and Solicitor of the Colony.

Originating Motion.

In this case the Attorney-General moved the Court *ex parte* for an order that three Advocates and Solicitors do show cause under Section 26 of the Advocates and Solicitors Ordinance 1934. An order to show cause was made. Thereupon the Advocates and Solicitors concerned moved the Court for an order to set aside the order to show cause. This motion came on for hearing before a Court composed of Huggard C. J. and Terrell J. The three Advocates and Solicitors concerned were each separately represented and their Counsel addressed the Court in support of their motion. The Attorney-General was represented in Court by the Solicitor General and as soon as the Solicitor General commenced to address the Court in reply to the motion, the objection was taken that he had no right of audience, not being an Advocate and Solicitor of the Colony. After hearing Counsel for the Advocates and Solicitors the Court adjourned the proceedings for the Attorney-General to argue this point. On the adjourned hearing the Attorney-General appeared in person and argued the question.,

Withers-Payne, Koek and Cobbett, each representing one of the respondents. The powers given to the Attorney-General by Section 36 are given to him as head of the Bar or personally, not as a Law Officer. The present Solicitor-General is not a member of the local Bar and has no right of audience except when he appears for the Crown. These proceedings are not proceedings on behalf of the Crown. In the course of argument Counsel referred to *Chu Kok Foo,* Van Someren 91; *Dixon* v. *Farrer,* (1901) 2 K.B. 791; *Graham* v. *Commissioners of Public Works,* (1886) 18 Q.B.D. 43, 48; *Commissioners of Public Works,* v. *Pontypridd,* (1920) 2 K.B. 233; *Rex* v. *Commissioners of Income Tax,* (1920) 1 K.B. 426; *Queen* v. *Archbishop of Canterbury,* (1903) 1 K.B. 426: *Chamberlain's Settlements,* (1921) 2 Ch. 533 at 540; *In re a Solicitor,* (1934) 2 K.B. 56;

The Court adjourned to enable the Attorney-General to address it on this point.

The Attorney-General (*P. A. McElwaine, K.C.).* The Attorney-General is named as Law Officer. As he need not be a member of the local Bar it cannot have been intended to give him powers as head of the local Bar of which he might not be a member. As the complaint against the three advocates relates to their conduct when holding the fiat of the Deputy Public Prosecutor in criminal cases the Crown is directly interested. The Attorney-General appears only for the Crown and the Solicitor-General can represent him. The Crown's interests are not confined to criminal cases or to cases in which it is directly financially interested. The Crown represents the public. He referred to *R.* v. *Wilkes,* 98 E.R. 327: *Wilkes* v. *R. Wilmott, A.-G.* v. *Brown.* 36 E.R. 384: *A.-G.* v. *Compton,* 62 E.R. 951: *Ellis* v. *Duke of Bedford,* (1899) 1 Ch. at p. 504; *R.* v. *Controller General of Patents,* (1899) 1 Q.B. at pp. 913, 914; *R.* v. *Archbishop of Canterbury,* (1903) 1 K.B. 289; *Olympic* v. *Hawk,* (1913) P. at p. 289; *Fraser* v. *Balfour.* 34 T.L.R. 532: *London County Council* v. *A.-G.,* (1902) A.C. at p. 168; *Paddock* v. *Forrester,* 133 E.R. 465; *A.-G.* v. *Cockermouth.* 18 Eq. at pp. 176-178: *Dixon* v. *Farrer,* 18 Q.B.D. at pp. 47-49; *A.-G.* v. *Spalding.* (1907) 2 K.B. at pp. 485-486; *A.-G.* v. *Dean of Windsor.* 11 E.R. 472; *A.-G.* v. *Duke of Richmond,* (1907) 2 K.B. at p. 942; *S.G.* v. *Law Reversionary,* 8 Ex. 233; and Solicitors Acts 1874, 1888, 1932 sections 5, 9. Ordinance No. 101 (Courts) section 92.

Withers Payne, Koek and *Cobbett* replied.

Cur. Ad. Vult.

The judgment of the Court (**HUGGARD, C.J. & TERRELL, J.**) was as follows:—

On the hearing of three motions by the respondents to set aside the order to show cause granted on the 8th April, 1935, the respondents took the objection that the acting Solicitor-General, not having been admitted as an advocate and solicitor in the Colony, had no right of audience which would entitle him to appear for the Attorney-General.

Section 36 (1) of the Advocates and Solicitors Ordinance, 1934, gives advocates and solicitors the exclusive right to appear and plead in all Courts of Justice. Section 36 (2) reads as follows :—

> "Nothing herein shall affect the right, which is hereby declared, of His Majesty's Attorney-General and Solicitor-General for the Colony and persons appointed to perform temporarily the duties of His Majesty's Attorney-General or Solicitor-General for the Colony or any qualified person or person who has passed all the examinations requisite for the qualification acting under the authority of any of them to appear and plead on behalf of the Crown in the said Courts, and to have such priority as is customary in England."

The short point for decision is whether in these proceedings the Attorney-General is acting on behalf of the Crown.

Until the bringing into force of the present Ordinance on the 1st January of this year the procedure in the case of disciplinary action affecting an advocate and solicitor was governed by the provisions of the Ordinance No. 101 (Courts). Section 92 (1) of that Ordinance read as follows :—

> "Applications that an advocate and solicitor may be suspended from practice, or that he may be struck off the rolls, shall be by motion for an order calling upon he advocate and solicitor to show cause."

It would appear from the very general terms in which this subsection is worded that under the old Ordinance it was open to any member of the public to make an application under the section, although actually there is no record of any such application except at the instance of the Bar Committee.

The procedure under the old Ordinance was accordingly analogous to that under the Solicitors Acts in England. Under section 4 of the Act of 1932 a disciplinary committee is constituted and under section 5 (1) applications to strike a solicitor off the rolls are to be made and heard before such statutory committee, but by a proviso to that sub-section the jurisdiction exercisable by the Master of the Rolls or any Judge of the High Court over solicitors is preserved, and section 9 lays down the procedure to be followed when the application is made to the High Court direct and not to the statutory committee. It follows from this that the right of any member of the public to apply direct to the High Court still exists, though as a matter of convenience such a right is rarely exercised (see *Herber* : The Law as to Solicitors, p. 19.)

If the public have a right to make an application, it is not disputed that the Attorney-General on behalf of the Crown has likewise the right to apply, or intervene, in any case in which the Crown is interested. In such cases it would *prima facie* be presumed in the Attorney-General's favour that the Crown had an interest, but it would be open to argument that the Crown had in fact no interest and that therefore the Attorney-General should not be heard. (See *Dixon* v. *Farrer*, 18 Q.B.D. p. 47 at p. 51.)

At the hearing before the Court the respondents argued on the authority of *In re Chamberlain's Settlements*, 1921, 2 Ch. p. 533 and other cases that in the present case the Crown had in fact no interest, whereas the Attorney-General submitted that as the questions arising on the main application affected the conduct of his office as Public Prosecutor the Crown was very closely interested. For reasons to be given later the Court is of opinion that these arguments are not really material.

The present Ordinance has altered the procedure in certain important respects. In lieu of section 92 (1) of Ordinance No. 101 (Courts) we now have section 26 (1) of the Advocates and Solicitors Ordinance, 1934, which reads as follows:—

> "Application that an advocate and solicitor may be struck off the roll or suspended from practice or censured shall be by motion on behalf of the Bar Committee or by or on behalf of the Attorney-General, intituled 'In the matter of an advocate and solicitor,' for an order calling upon the advocate and solicitor to show cause."

Whereas the old Ordinance by implication allowed an application to be made either by the Bar Committee, by the general public, or, where he could show that the Crown had an interest, by the Attorney-General, the present Ordinance restricts such applications to the Bar Committee and to the Attorney-General. The question then arises in what capacity this statutory right or

duty has been vested in the Attorney-General. It is argued on behalf of the respondents that it is in his capacity as head of the Bar. That argument, however, finds no support in the Ordinance itself. On the contrary, by section 26 the legislature has vested a similar right or duty in members of the Bar through the medium of the Bar Committee, and it is not to be supposed that it was intended to vest the same right or duty in the Attorney-General merely as another member of the Bar. Indeed it may well be questioned whether, in view of the fact that in this Colony the two branches of the profession are fused, the Attorney-General here occupies the same position in relation to the local Bar as does the Attorney-General of England in relation to the Bar of England. It is not necessary, however, for the purposes of the present case, to come to a decision on this point. It is sufficient to say that in the opinion of the Court it is not in the capacity suggested that the Attorney-General is mentioned in section 26 of the Ordinance.

It follows therefore that the Attorney-General is specifically mentioned in Section 26 in some other capacity, and it might be argued that certain duties are conferred upon the Attorney-General just as they might be conferred upon any other officer of Government and without reference to the fact that he is the first Law Officer of the Crown. The Court is, however, of opinion that this is not the proper construction to place upon the section. It has already been pointed out that by the present Ordinance the rights of the public to apply have been taken away, and the natural conclusion is that such rights have now been vested in the Attorney-General. The right of the Attorney-General to intervene on behalf of the Crown where it has an interest of course remains, but the effect of the new Ordinance is to give the Attorney-General the right of initiating proceedings in any case where the public could have initiated them, and whether the Crown has a special interest or not. One of the principal motives underlying the Advocates and Solicitors Ordinance, 1934, is the protection of the public. It is for this purpose that the legislature has sought to confine the practice of the law to persons properly qualified, and the public is equally interested in seeing that the practice of the profession is maintained at a high standard. It would in fact be difficult to mention even a point of etiquette, having for its object the maintenance of a high professional standard, in which the public has not at all events some interest.

In the result the legislature has declared that the Attorney-General as representing the public has a direct interest which will enable him to initiate proceedings under section 26, and applications by the Attorney-General are no longer limited to applications which he could previously have made and can still make on behalf of the Crown where the Crown can be shown to have a direct interest. The substantive motion is clearly filed by the Attorney-General in his former capacity. If the motion had been directly on behalf of the Crown, the motion paper should have so declared.

As regards the position of the Attorney-General when he appears on behalf of the public, the following passage from the judgment of Channell, J. in the case of *A-G. and Spalding Rural Council* v. *Garner*, 1907, 2 K.B. p.480 at p.485, may be quoted:—

> "The Attorney-General takes proceedings as the representative of the public, for he represents the Crown and the Crown represents the public. I quote from a book which I understand is recognised as an authority in the Chancery Division, namely Calvert on Parties (2nd Ed. at p.26), and the matter is there stated as follows:
> 'The Attorney-General is by law the representative of the public interests. The reason is that he is the officer of the Crown, and that, according to the principles of our law, the interest of the public is vested in the Crown. 'The Attorney-General' said Lord Eldon in *Attorney-General* v. *Brown*, 1 Swans. p. 265, at p.294, 'is an officer of the Crown, and in that sense only, the officer of the public'."
> Whenever therefore the rights of the Sovereign, as the guardian of the interests of the public, are affected, they must find their protection in the presence of the Attorney-General."

Accordingly, as in our view the Attorney-General is directly empowered by section 26(1) to protect the interests of the public he can only do so by virtue of the principle that the Crown as *parens patriae* protects the interests of the public. It follows therefore that his rights and duties under section 26 are conferred upon him as first Law Officer of the Crown, and his application is indirectly on behalf of the Crown. The Solicitor-General is accordingly empowered by section 36(2) to appear in this matter and the objection advanced by the respondents fails.

Objections Over-ruled.

Solicitor for 1st Respondent—
Withers Payne, Esq.

Solicitor for 2nd Respondent—
E. R. Koek, Esq.

Solicitor for 3rd Respondent—
J. C. Cobbett, Esq.